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IN THE

Supreme Court of the United States

October Term 1950

No. 454

MAUDE J. UNDERWOOD, *Petitioner,*

v.

CAPITAL TRANSIT COMPANY, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States.

The petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above cause on May 29, 1950 (R. 168).

OPINIONS BELOW

The United States District Court for the District of Columbia did not render an opinion in this cause. The opinion of the United States Court of Appeals for the District of Columbia Circuit is set forth on pages 165-167 of the record.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on May 29th, 1950 (R. 168). Petition for rehearing was denied on September 13, 1950 (Supp. R. 8)

QUESTIONS PRESENTED

This case involves:

1. The denial of the right of trial by jury on all material and relevant issues of fact.
2. That such denial was prejudicial on the issues which were submitted to the jury.
3. That such denial was reversible error, even though prejudice was not immediately apparent.

CONSTITUTION AND LAWS INVOLVED

Under the Seventh Amendment to the Constitution of the United States appellant was entitled to have the relevant and material evidence introduced in support of the issues in her case submitted to a jury for determination.

STATEMENT OF FACTS

Appellant sued to recover damages for permanent injuries sustained in a collision between two street cars on one of which she was a passenger. Appellee denied liability on the grounds the brakes locked. No evidence was offered by appellee in support of this its sole defense.

Appellant, a member of the staff of the Director of the Economic and Statistical Section of the Department of Agriculture, testified that prior to the accident she had been working for twenty years without any serious illness

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or disability. That when the cars collided she was thrown to the floor, injuring her back, so much time from work being lost by reason of this injury and her disability that she had to resign and was then disabled and unable to work.

Her family physician testified that prior to the accident she had never complained of her back or leg; that he had treated her since the accident; that her back and leg were giving her trouble and that she was still under his care because of these injuries.

Dr. Pelland, an orthopedic surgeon, testified he had treated her from October 2, 1945 to September 12, 1946 for injuries to her back and sciatica in her leg (R. 71 A). He further testified:

> "I say a single isolated trauma of the type she states had occurred" (R. 70 A).

And that when he operated he found a looseness of the vertebral bodies, a buckling of the ligamentum flavum which gave rise to sciatica, which would presuppose some rupture of the annular ligament that may have occurred from isolated trauma. (R. 72 A) That appellant had a mechnaically unstable back which could give her trouble from injuries. (R. 76 A)

Upon cross examination Doctor Pelland, in direct contradiction of his previous testimony, was asked

> "Am I correct, doctor, in summary, that in all the x-rays that were taken and examinations by you, there wasn't anything which would indicate any injury resulting from trauma?"

to which he replied as follows:

> "That is right."

The Court, because of this answer, granted a motion of defendant to limit appellant's claim for pain, suffering

and expenses and other damages to a period of eight to nine weeks. (R. 139 A) And the court instructed the jury that they were to exclude from their consideration any damages occurring after July 8th, 1945, as all these consequences were due to either a congenital or developmental condition. (R. 162 A)

The jury returned a verdict for the defendant.

SPECIFICATION OF ERRORS TO BE URGED

That the United States Court of Appeals for the District of Columbia Circuit erred in its ruling that the withdrawal from the consideration of the jury of the evidence pertaining to appellant's damages and injuries after July 8th, 1945, was not a denial of her constitutional rights. The United States Circuit Court of Appeals for the District of Columbia Circuit erred in not remanding the case for a retrial so that all the issues could be submitted to the jury for determination. The United States Circuit Court of Appeals for the District of Columbia Circuit erred in its ruling that the denial of appellant's right to have the issues as to the extent of her injuries submitted to the jury was not prejudicial since the instruction of denial by the Court discrediated the plaintiff and her witnesses in the eyes of the jury on the issues which were submitted to the jury.

REASONS FOR GRANTING THE WRIT

Petitioner asserts that a writ of certiorari should be granted in this cause for the reason:

1. The ruling of the United States Court of Appeals for the District of Columbia Circuit is contrary to former United States Supreme Court decisions.

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2. The appellant by the ruling of the United States Court of Appeals for the District of Columbia Circuit has been denied her right of trial by jury on some issues, which denial prejudiced her in the eyes of the jury on the issues submitted to the jury.

3. A constitutional question is involved in that the United States Court of Appeals for the District of Columbia Circuit has ruled that denial of the constitutional right of appellant to a jury trial is not error if not prejudicial.

ARGUMENT AND BRIEF

Appellant was deprived of her right to have the issues as to the nature and extent of her injuries passed upon by a jury.

Appellant, a passenger on a street car, in collision with another street car, was seriously and permanently injured. That she was a passenger, and the cars collided, was admitted. As appellee's sole defense was that the brake locked, no evidence being offered in support thereof the only issue related to the injury.

Appellant and her witnesses testified her injuries were serious and permanent. That her medical expenses and losses occasioned by these injuries ran into the thousands of dollars.

The Court instructed the jury that her injuries were congenital in nature, denied her the right to compensation for these injuries and limited her recovery to damages sustained within a period of eight weeks following the date of the accident.

The United States Court of Appeals for the District of Columbia Circuit ruled that, assuming this instruction to be error, appellant was not prejudiced as the verdict was for the defendant.

Appellant contends:

1. That the instruction denied the appellant a trial by jury of this issue.

2. That the instruction was prejudicial.

1. THE INSTRUCTION WAS A DENIAL OF APPELLANT'S CONSTITUTIONAL RIGHT TO A TRIAL BY JURY

Trial by jury means the submission of all material and relevant issues in controversy to the jury for its decision.

In the instant case the trial judge concluded from the conflicting testimony of Dr. Pelland and the testimony of Dr. Duffey, as modified by cross examination, that appellant's injuries were congenital in nature and refused to submit this issue to the jury. (R. 139 A)

The Court in reaching this conclusion disregarded entirely appellant's testimony and the testimony of both Dr. Duffey and Dr. Pelland which was favorable to appellant.

In *Baylis* v. *Travelers Ins. Co.*, 5 S. Ct. 494; 113 U. S. 320; 28 L. Ed. 989, this Court ruled that a trial court erred if it substituted itself for the jury by passing upon the effect of the evidence.

In *Hodges* v. *Easton*, 106 U. S. 408; this Court ruled that a trial court could not, consistently with the constitutional right of trial by jury, submit a part of the facts to the jury and itself determine the remainder. *U. S.* v. *Tillotson*, 12 Wheaton 180; 6 L. Ed. 594. *Ellis* v. *Union Pacific*, 329 U. S. 649. *Lavender* v. *Kurn*, 327 U. S. 645. *Aetna Life Ins. Co.* v. *Ward*, 11 S. Ct. 720; 140 U. S. 76-88, 35 L. Ed. 371.

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2. THE INSTRUCTION WAS PREJUDICIAL

The instruction was prejudicial in that it instructed the jury that appellant's testimony and that of her witnesses, as to the nature and cause of her injuries, was false. *Peck* v. *Henrick*, 167 U. S. 624.

The said instruction prejudiced the appellant on the issues which were submitted to the jury because the wrongful instruction discredited her and her witnesses in the eyes of the jury.

CONCLUSION

Wherefore Petitioner prays that a writ of certiorari may issue under the seal of this Honorable Court in this cause, directed to the United States Court of Appeals for the District of Columbia Circuit, and upon such review the judgment of said Court of Appeals be vacated, reversed and set aside, and that the case be remanded to said Court with instructions to proceed further in accordance with the views of this Court.

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